

information required in a Notice of Internet Availability of Proxy Materials pursuant to paragraphs (d) and (n)(4) of this section is incorporated in the proxy statement and the form of proxy.

(3) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not comply with

(i) The timing provisions of paragraphs (a) and (l)(2) of this section; and

(ii) The obligation to provide copies pursuant to paragraph (j) of this section.

(4) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not include in its Notice of Internet Availability of Proxy Materials, proxy statement, or form of proxy the following disclosures:

(i) Instructions regarding the nature of the communication pursuant to paragraph (d)(2) of this section;

(ii) Instructions on how to request a copy of the proxy materials; and

(iii) Instructions on how to access the form of proxy pursuant to paragraph (d)(10) of this section.

[72 FR 4168, Jan. 29, 2007, as amended at 72 FR 42238, Aug. 1, 2007; 72 FR 42238, Aug. 1, 2007; 73 FR 17814, Apr. 1, 2008; 75 FR 9081, Feb. 26, 2010]

#### **§ 240.14a-17 Electronic shareholder forums.**

(a) A shareholder, registrant, or third party acting on behalf of a shareholder or registrant may establish, maintain, or operate an electronic shareholder forum to facilitate interaction among the registrant's shareholders and between the registrant and its shareholders as the shareholder or registrant deems appropriate. Subject to paragraphs (b) and (c) of this section, the forum must comply with the federal securities laws, including Section 14(a) of the Act and its associated regulations, other applicable federal laws, applicable state laws, and the registrant's governing documents.

(b) No shareholder, registrant, or third party acting on behalf of a shareholder or registrant, by reason of establishing, maintaining, or operating an electronic shareholder forum, will

be liable under the federal securities laws for any statement or information provided by another person to the electronic shareholder forum. Nothing in this section prevents or alters the application of the federal securities laws, including the provisions for liability for fraud, deception, or manipulation, or other applicable federal and state laws to the person or persons that provide a statement or information to an electronic shareholder forum.

(c) Reliance on the exemption in § 240.14a-2(b)(6) to participate in an electronic shareholder forum does not eliminate a person's eligibility to solicit proxies after the date that the exemption in § 240.14a-2(b)(6) is no longer available, or is no longer being relied upon, provided that any such solicitation is conducted in accordance with this regulation.

[73 FR 4458, Jan. 25, 2008]

#### **§ 240.14a-18 Disclosure regarding nominating shareholders and nominees submitted for inclusion in a registrant's proxy materials pursuant to applicable state or foreign law, or a registrant's governing documents.**

To have a nominee included in a registrant's proxy materials pursuant to a procedure set forth under applicable state or foreign law, or the registrant's governing documents addressing the inclusion of shareholder director nominees in the registrant's proxy materials, the nominating shareholder or nominating shareholder group must provide notice to the registrant of its intent to do so on a Schedule 14N (§ 240.14n-101) and file that notice, including the required disclosure, with the Commission on the date first transmitted to the registrant. This notice shall be postmarked or transmitted electronically to the registrant by the date specified by the registrant's advance notice provision or, where no such provision is in place, no later than 120 calendar days before the anniversary of the date that the registrant mailed its proxy materials for the prior year's annual meeting, except that, if the registrant did not hold an annual meeting during the prior year, or if the date of the meeting has changed by more than 30 calendar days from the

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prior year, then the nominating shareholder or nominating shareholder group must provide notice a reasonable time before the registrant mails its proxy materials, as specified by the registrant in a Form 8-K (§249.308 of this chapter) filed pursuant to Item 5.08 of Form 8-K.

INSTRUCTION TO § 240.14a-18. The registrant is not responsible for any information provided in the Schedule 14N (§240.14n-101) by the nominating shareholder or nominating shareholder group, which is submitted as required by this section or otherwise provided by the nominating shareholder or nominating shareholder group that is included in the registrant's proxy materials.

[75 FR 56787, Sept. 16, 2010]

## § 240.14a-20 Shareholder approval of executive compensation of TARP recipients.

If a solicitation is made by a registrant that is a *TARP recipient*, as defined in section 111(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(a)(3)), during the period in which any obligation arising from financial assistance provided under the *TARP*, as defined in section 3(8) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(8)), remains outstanding and the solicitation relates to an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors, as required pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)), the registrant shall provide a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter), including the compensation discussion and analysis, the compensation tables, and any related material.

NOTE TO § 240.14a-20: TARP recipients that are smaller reporting companies entitled to provide scaled disclosure pursuant to Item 402(l) of Regulation S-K are not required to include a compensation discussion and analysis in their proxy statements in order to comply with this section. In the case of these smaller reporting companies, the required vote must be to approve the compensation of executives as disclosed pursuant to Item 402(m) through (q) of Regulation S-K.

[75 FR 2794, Jan. 19, 2010]

## 17 CFR Ch. II (4-1-14 Edition)

## § 240.14a-21 Shareholder approval of executive compensation, frequency of votes for approval of executive compensation and shareholder approval of golden parachute compensation.

(a) If a solicitation is made by a registrant and the solicitation relates to an annual or other meeting of shareholders at which directors will be elected and for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (§229.402 of this chapter), the registrant shall, for the first annual or other meeting of shareholders on or after January 21, 2011, or for the first annual or other meeting of shareholders on or after January 21, 2013 if the registrant is a smaller reporting company, and thereafter no later than the annual or other meeting of shareholders held in the third calendar year after the immediately preceding vote under this subsection, include a separate resolution subject to shareholder advisory vote to approve the compensation of its named executive officers, as disclosed pursuant to Item 402 of Regulation S-K.

INSTRUCTION TO PARAGRAPH (a): The registrant's resolution shall indicate that the shareholder advisory vote under this subsection is to approve the compensation of the registrant's named executive officers as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter). The following is a non-exclusive example of a resolution that would satisfy the requirements of this subsection: "RESOLVED, that the compensation paid to the company's named executive officers, as disclosed pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, compensation tables and narrative discussion is hereby APPROVED."

(b) If a solicitation is made by a registrant and the solicitation relates to an annual or other meeting of shareholders at which directors will be elected and for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (§229.402 of this chapter), the registrant shall, for the first annual or other meeting of shareholders on or after January 21, 2011, or for the first annual or other meeting of shareholders on or after January 21,